differentiation of services, making benchmark regulation both less necessary and less feasible. And benchmarks will be entirely irrelevant to a fast-growing number of competitive services, including high-speed access services offered by ILECs through separate subsidiaries, which will be exempt from many traditional forms of regulation.[201]

C. The Merger Will Not Increase The Incentive Or Ability To Discriminate

AT&T, MCI WorldCom and Sprint contend that, by increasing the amount of interLATA traffic that originates and terminates within SBC/Ameritech's region, the merger will increase the new company's incentive and ability to engage in price and non-price discrimination against long distance and local exchange carriers.[202] The Commission has squarely rejected these arguments in the past, and the commenters provide no new evidence for the Commission to reach a different result here.[203] The merger will increase the percentage of interLATA traffic originating and terminating in-region by only 2.8 percentage points for SBC (41.3% to 44.1%)

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[201] See In re Deployment of Wireline Services Offering Advanced Telecommunications Capability, Memorandum Opinion and Order and Notice of Proposed Rulemaking, CC Docket No. 98-147, FCC 98-188, 1998 WL 458500, ¶ 13 (released Aug. 7, 1998). While serving as the Commission's chief economist, Sprint's own expert argued that new services should be "wall[ed] off from the culture of entitlement" and regulation. Joseph Farrell, Prospects for Deregulation in Telecommunications (May 30, 1997) (revised version) available at <http://www.fcc.gov/ Bureaus/OPP/Speeches/jf050997.html> (visited Nov. 1, 1998).

[202] See Sprint at 20-28; AT&T at 31-34; MCI WorldCom at 24-26. Curiously, while AT&T focuses almost exclusively on price discrimination, Sprint anticipates largely non-price discrimination. See Sprint at 20-28; AT&T at 31-34; MCI WorldCom at 24-26.

[203] See AT&T at 32; MCI WorldCom at 24; Sprint at 25. AT&T's reliance on BellSouth v. FCC, 144 F.3d 58, 67 (D.C. Cir. 1998), for this proposition is clearly mistaken. The court in BellSouth stated that controlling both ends of a telephone call was relevant to the "opportunity to shift costs." Id. The court in fact stated that, "with respect to the claim of discrimination against competing providers," the relevant issue here, "the BOCs could not easily sort out [particular] transmissions . . . on the customer end of a call, as they would have to do in order to discriminate efficiently." Id. at 67 n.10.

and 6.9 points for the combined company (37.2% to 44.1%).[204] This is no greater an increase than in the SBC/Telesis merger, where the Commission found that an increase of "only six to seven percentage points" did not pose any anticompetitive risk.[205]

1. The Merger Will Not Lead To Price Discrimination

AT&T and MCI WorldCom attempt to resurrect the argument — rejected in SBC/Telesis and BA/NYNEX—that an RBOC merger somehow will increase the incentive and ability to charge long-distance rivals higher prices for exchange access than they charge their own interexchange affiliate(s).[206] But it is widely accepted that "[p]rice discrimination is relatively easy for [the Commission] and others to detect, and is therefore unlikely to occur."[207] The Commission has "in place adequate safeguards" to prevent price discrimination or price squeezes,[208] including regulations implementing the statutory requirements that long distance operations be conducted by a separate subsidiary[209] and that BOCs charge their long distance

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[204] See Schmalensee/Taylor Reply Aff. ¶¶ 21-22.

[205] See SBC/Telesis ¶ 50.

[206] AT&T at 31-34; MCI WorldCom at 24-25.

[207] SBC/Telesis ¶ 53; see also Schmalensee/Taylor Reply Aff. ¶ 31. Even AT&T's own economists have admitted that access charges are "a peculiar place to be looking for discriminatory practices," because "they are easily quantified and closely monitored." See Affidavit of B. Douglas Bernheim & Robert D. Willig, United States v. Western Electric Co., Civ. No. 82-0192, at 123-24 (Dec. 1, 1994).

[208] In re Access Charge Reform, Report and Order, 12 FCC Rcd. 15982, ¶ 278 (1997); see also BA/NYNEX ¶ 117. Moreover, even if SBC and Ameritech could evade these comprehensive safeguards, doing so would require massive unlawful conduct, and the Commission specifically has rejected potential future misconduct as ground for barring a merger. See, e.g., In re Bell Atlantic Mobile Systems and NYNEX Mobile Communications Co., Order, 10 FCC Rcd. 13368 ¶ 37 (1995); In re American Telephone & Telegraph Co. Acquisition of ITT Communications Services, Inc., Memorandum Opinion and Order, 2 FCC Rcd. 3948, ¶ 16 (1987).

[209] 47 U.S.C. § 272(a), (b).

affiliates the same access charges they charge other IXCs.[210] Moreover, only entry into in-region long-distance service "might change" SBC's and Ameritech's incentives to discriminate but, as before, the Section 271 issue "is not the subject of this proceeding."[211] Also, the IXCs do not and cannot dispute the Commission's prior finding that, in the event of an attempted price squeeze, "new entrants or other competitors would be able to defeat that scheme" by purchasing "the interLATA service on a wholesale basis or purchas[ing] unbundled network elements to compete with SBC/PacTel's offering."[212]

2. The Merger Will Not Lead To Non-Price Discrimination

MCI WorldCom and Sprint also argue that SBC/Ameritech will engage in non-price discrimination.[213] But as the Commission has recognized, the combination of stringent regulatory safeguards, pre-existing objective standards based upon an established course of dealings, ongoing monitoring, and a record of consistent improvement of access and interconnection services, make clear that any incentive and ability to engage profitably in non-price discrimination is illusory.[214] Moreover, because the merger will result in only a "modest"

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[210] 47 U.S.C. § 272(e)(3). The Commission's concerns expressed in BA/NYNEX about the effect of the Eighth Circuit's decision in Iowa Utilities Board on the availability of interconnection and UNEs have since proven unwarranted, because "virtually every state in the union has adopted [the FCC's pricing] policies." Reed Hundt, Chairman, FCC, Speech to Chamber of Commerce, Washington, D.C. (May 29, 1997) (as prepared for delivery), available at <http://www.fcc.gov/Speeches/Hundt/spreh727.html> (visited Nov. 6, 1998).

[211] SBC/Telesis ¶ 52.

[212] SBC/Telesis ¶ 54.

[213] Sprint at 20-32, Katz/Salop Decl. ¶ 10; MCI WorldCom at 25-26, Baseman/Kelley Decl. ¶ 52.

[214] See Schmalensee/Taylor Reply Aff. ¶¶ 34-50. Katz & Salop state that, although much of their argument is phrased in terms of discrimination against IXCs in the provision of access services and CLECs in the provision of interconnection services, "[a]ccess can take several forms" and they use the term "access" in reference to all forms of access and interconnection.

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increase in the number of calls originating and terminating "in-region," the merger will not cause "a substantial reduction in competition or tendency towards monopoly" even if SBC/Ameritech "were to practice unlawful non-price discrimination on these calls," which it will not.[215]

As the Commission recognized in BA/NYNEX, any attempt to selectively degrade service to or from a rival is unlikely to take place or succeed.[216] "[N]on-price discrimination is a violation of several provisions of the Communications Act," and "the Commission has adopted rules designed to prevent such discrimination."[217] Moreover, the wide availability of competitive

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Sprint, Katz/Salop Decl. ¶ 8. Similarly, our response is largely phrased in terms of non-discrimination against IXCs, but the same arguments apply to non-discrimination against CLECs and against providers of combined or bundled service offerings.

[215] SBC/Telesis ¶ 57. The IXCs themselves recognize improvements in Pacific Bell and Nevada Bell access services since the merger. For example, in SBC's "report card" from AT&T for the first quarter of 1998, AT&T stated:

> Throughout the first quarter of 1998, SBC - Pacific's leadership and the SBC - Pacific AT&T account management team remained focused on their 1998 quarter over quarter commitments. The Gap closure initiatives, designed to provide AT&T the same level and quality of service in California that AT&T enjoys with SBC, performed at the forecasted level.

Deere Reply Aff. ¶ 13 (quoting AT&T, Connectivity Vendor Performance Report for SBC-Pacific Region 7 (First Quarter 1998) (emphasis added)).

[216] BA/NYNEX ¶ 118.

[217] BA/NYNEX ¶ 120. See also MCI/BT II ¶ 210. Section 272(c) of the Communications Act, as amended, prohibits a BOC from discriminating between its long distance affiliate and any other entity in providing services, facilities, and information, and requires compliance with affiliate transaction and accounting standards. Section 272(e) mandates similar nondiscrimination requirements in providing exchange access and prohibits a BOC from providing to its long distance affiliate services or information not provided to its IXC competitors. In re Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area, Second Report and Order in CC Docket No. 96-149 and Third Report and Order in CC Docket No. 96-61, 12 FCC Rcd. 15756, ¶¶ 111-119 (1997). Similarly, Section 251 precludes non-price discrimination in the provision of interconnection services. Id. ¶ 163. Moreover, the Commission has found that its own

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access alternatives — including AT&T/TCG, MCI/WorldCom/MFS/Brooks Fiber, NEXTLINK, McLeodUSA, WinStar and numerous other wireline and wireless competitive LECs — dooms any discriminatory scheme to certain failure.[218]

Both IXCs and CLECs closely monitor the quality of the services that SBC and Ameritech provide.[219] Those companies now have many years of experience with the quality of access that SBC and Ameritech provide. This information will not suddenly disappear when this merger closes. Nor will the wealth of information that ILECs provide in the ARMIS reports filed with the Commission on service quality. The merger will not, in short, make SBC/Ameritech's access and interconnection services any less transparent than they are today.

Moreover, as described in the Reply Affidavit of William C. Deere, the increasing deployment of modern signaling systems (Signaling System 7), AIN capabilities and ATM network components permitting multimedia telecommunications does not increase the risk of discrimination.[220] Even on these sophisticated networks, any attempt to degrade the quality of calls to competitors' customers would be readily noticeable both to competitors and to regulators.[221] Moreover, the RBOCs do not by any means have a monopoly on these new

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enforcement processes are effective in ensuring compliance with these requirements. The Commission has also concluded that BOC mergers would not affect these findings. Id. ¶ 132.

[218] See Schmalensee/Taylor Reply Aff. ¶ 36. The Commission has even rejected these arguments in approving mergers in which the local exchange carrier is not checked by effective access and interconnection regulations. MCI/BT II ¶¶ 175-98, 202-04, 210; see also In re Sprint Corp. Petition for Declaratory Ruling Concerning Section 310(b)(4) and (d) and the Public Interest Requirements of the Communications Act of 1934, as amended, Declaratory Ruling and Order, 11 FCC Rcd. 1850, ¶¶ 60, 96, 134 (1996) ("Sprint Declaratory Ruling").

[219] Deere Reply Aff. ¶¶ 10-13.

[220] Deere Reply Aff. ¶ 7.

[221] Deere Reply Aff. ¶ 8.

technologies. The major IXCs all have their own SS7, AIN and ATM capabilities, and SBC and Ameritech offer these facilities or capabilities as part of their interconnection offerings.[222]

Finally, the theories of Sprint and MCI WorldCom that the merger will increase the ability and incentive to discriminate[223] are purely speculative.[224] Sprint's economists offer an economic theory hinged on the assumption that a competing carrier's ability to serve customers may depend upon "its ability to obtain efficient access arrangements at reasonable prices from multiple ILECs," in which case "the degradation, delay, or denial of access in one ILEC's region may weaken the competing carrier in the region of another ILEC."[225] Based on this assumption, Katz and Salop argue that the merger will increase the incentive to discriminate by enabling SBC/Ameritech to "internaliz[e]" the benefits to be received out-of-region from in-region discrimination.[226] But there is simply no evidence that any CLEC has been deterred from entering one ILEC's territory because of another ILEC's behavior. To the contrary, CLECs select the markets in which they will compete and go where they see the best opportunities.[227]

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[222] Deere Reply Aff. ¶ 9.

[223] See MCI WorldCom at 3-9, 24-26; Sprint at 20-28.

[224] See Schmalensee/Taylor Reply Aff. ¶ 34-35, 45-47, 50. Katz and Salop's arguments that the merger increases the ability to discriminate, Sprint, Katz/Salop Decl. ¶ 65, cannot be taken seriously. Their first contention, that the reduction in the number of benchmarks increases the ability to discriminate, is specious, as demonstrated elsewhere in this reply. See Section III.B. above. Their second argument, that "after the merger, SBC and Ameritech may gain the ability to coordinate and rationalize their exclusionary conduct to make detection and proof more difficult," Sprint, Katz/Salop Decl. ¶ 65 (emphasis added), is facially speculative and does not require a detailed response. They are then left to their third, even more attenuated contention, that "SBC may benefit from economies of scope in fighting regulatory battles in multiple state forums." Id. (emphasis added).

[225] Sprint, Katz/Salop Decl. ¶ 62 (emphasis added).

[226] Sprint, Katz/Salop Decl. ¶¶ 61-62; see also MCI WorldCom at 12.

[227] For example, the CEO of Focal Communications, a CLEC, was quoted after the merger was announced as saying that Focal refuses to compete in SBC's territory, see Hyperion Telecomm.

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Teligent, one of the newest CLEC entrants, just launched service in 10 markets, five in SBC's region.[228] Winstar has similarly built 3 of its initial 8 networks in SBC's region.[229] Katz and Salop do not support their speculative theory with any evidence that an attempt to raise the costs of rivals in SBC's region would "weaken the rivals' ability to offer services in Ameritech's region."[230] Nor do they give a single example demonstrating that "degradation, delay or denial of access" is in any way linked to the size of an ILEC, as this theory inevitably would predict.[231]

Sprint also argues that SBC/Ameritech is likely to discriminate in the provision of new, and as yet undefined, forms of interconnection in connection with Sprint's forthcoming ION service.[232] But Sprint is unable to point to a single "innovative" access or interconnection arrangement that it has requested in connection with a new service offering that SBC or Ameritech has said is not available.[233] In fact, in June of this year Sprint announced that it had

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at 25, while it does in Ameritech's. In actuality, Focal recently began offering switched local service in San Francisco, where SBC is the ILEC. Telephony, Communications Daily, Oct. 26, 1998, at 4.

[228] Teligent Press Release, Teligent Launches Service in First Ten Markets, Vows to Start a Communications Revolution (Oct. 27, 1998), available at <http://www.teligent.com/templates/temp-pressrel.asp?content_id=165> (visited Oct. 31, 1998).

[229] Winstar Press Release, WinStar Expands Large Account Sales Effort to 15 Markets (Sept. 16, 1998), available at <http://www.winstar.com/9161largeaccounts.htm> (visited Nov. 9, 1998).

[230] Sprint, Katz/Salop Decl. ¶ 62.

[231] Sprint at 22; see also Sprint, Katz/Salop Decl. ¶ 62.

[232] Sprint, Brauer Aff. ¶¶ 5, 8-10, 21. Indeed, Sprint admits that it has not yet developed the key software and billing systems needed for ION, nor is there a standard for ION interconnection. Sprint, Agee Aff. at 8.

[233] See Sprint at 26-27.

reached "key network access arrangements" with Southwestern Bell and Ameritech enabling it to launch its ION service in SBC and Ameritech states.[234]

Indeed, the discrimination contemplated by Sprint is unlikely to occur, for at least two reasons. First, AT&T/TCG/TCI, MCI WorldCom/MFS/Brooks Fiber/UUNet and Sprint are sophisticated firms that are fully able to negotiate interconnection arrangements, monitor the service they receive, and — as they have certainly proved — complain to state and federal regulators about any problems they believe they encounter from ILECs. And under Section 252(i), whatever terms these sophisticated competitors secure will inure to the benefit of smaller competitors as well.[235] Second, ILECs like SBC and Ameritech have competed in the provision of other services — such as intraLATA toll — for years without discrimination.[236] The charge that SBC/Ameritech will now discriminate against competitors is unsupported by either experience or logic.

D. The Merger Will Not Produce Any Other Anticompetitive Effects

1. Local Exchange And Exchange Access Markets

The effects of the National-Local Strategy, with its broad-scale facilities-based entry into new out-of-region markets, are unambiguously procompetitive. Moreover, as we have discussed, the merger is certain to spur additional new competition, as other carriers find they have no choice but to enter and compete in SBC/Ameritech's region.[237]

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[234] See Sprint Press Release, Sprint Announced Network Agreements with Local Phone Companies for Initial Rollout of Revolutionary New Services (June 17, 1998), available at <http://www.sprint.com/sprint/press/releases/9805/9806170591.html> (visited Nov. 13, 1998).

[235] 47 U.S.C. § 252(i).

[236] Schmalensee/Taylor Reply Aff. ¶¶ 43-44.

[237] See Schmalensee/Taylor Reply Aff. ¶ 16; Gilbert/Harris Aff. ¶ 28; Carlton Aff. ¶ 10; Carlton Reply Aff. ¶¶ 72-79. Indeed, several commenters concede that SBC's entry into out-of-

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Opponents of the merger declare that SBC and Ameritech have not done enough to open their markets to competition, or that the merger will create a company that is simply "too big," or that the merger must be blocked because of unrelated complaints against SBC and Ameritech. The record shows, however, that SBC and Ameritech have opened their markets to competition. Where competitors have chosen to compete, they have made substantial headway. The various "big is bad" arguments are theoretically unsound and entirely speculative. And, as the Commission has previously held, extraneous allegations are irrelevant to this transfer of control proceeding.

a. The Merger Will Not Impede The Market Opening Process

Opponents of the merger take this opportunity to argue yet again that SBC and Ameritech have not sufficiently opened their markets to competition. The facts show otherwise.

Since passage of the Telecommunications Act of 1996, there has been substantial, rapid and successful entry into the local exchange business, in SBC's and Ameritech's regions as elsewhere in the country. As the president of the CLEC trade association noted in opening the 1998 Association for Local Telecommunications Services (ALTS) business conference, "[n]ever before has there been so much opportunity for getting into so many markets."[238] ALTS has more than 100 members, a 25% increase between January and May of this year.[239]

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region markets can be expected to induce responsive entry into the SBC and Ameritech regions by other ILECs. See, e.g., CoreComm Newco at 13-14; Level 3 Communications at 4-5.

[238] Triumphant CLECs Investigate Divergent Paths To Future, Communications Business & Finance, May 18, 1998, available at 1998 WL 9068983.

[239] Triumphant CLECs Investigate Divergent Paths To Future, Communications Business & Finance, May 18, 1998, available at 1998 WL 9068983.

CLECs have rapidly grown both their market shares and their revenues. Merrill Lynch reported "strong revenue growth" for CLECs for the first quarter of 1998, an increase of 57% over the previous year, and maintains its "bullish outlook for the CLEC group as a whole due to the attractive prospects for growth."[240] It is estimated that CLECs as a group have added more new business lines in 1998 than all RBOCs combined.[241] Thus, the market-share statistics cited by our opponents, particularly those that focus solely on access-line counts, significantly understate the competitive inroads that have been made.[242]

Competition is every bit as robust in the SBC and Ameritech regions as it is elsewhere. The California PUC identifies 13 competitors already serving customers in that state over their own facilities or using SBC's unbundled loops.[243] Just this year, Teligent, Allegiance Telecom,

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[240] Daniel Reingold and John Sini, Jr. Merrill Lynch, Telecom Services — Local: CLECs: What's Really Going On 5 (June 19, 1998) (Attachment A to AT&T, Levinson Aff.). According to an analyst's report attached to AT&T's Petition to Deny, "[a]t March 31, new entrants' revenue share of the US local telecom market stood at 3.5%, up from 3.0% on December 31, 1997. By year-end 1998, we forecast that the CLEC's share will reach 5.4%." Id. at 1.

[241] Grubman Reply Aff. ¶ 4.

[242] Traditional counts of access lines understate the impact of competitive access and bypass alternatives. See In re FCC Merger En Banc, Transcript, 89 (Oct. 22, 1998) (Statement of Ivan Seidenberg, Pres. & CEO of Bell Atlantic); Daniel Reingold and John Sini, Jr., Merrill Lynch, Telecom Services-Local: The Business Line Migration Phenomenon: Updated Methodology; Even Better Growth, passim (Sept. 9, 1998). In addition, as the Seventh Circuit has observed, "heavy reliance on market share statistics is likely to be an inaccurate or misleading indicator of 'monopoly power' in a regulated setting." MCI Communications. Corp. v. AT&T, 708 F.2d 1081, 1107 (7th Cir. 1983), cert. denied, 464 U.S. 891 (1983); see also Metro Mobile CTS, Inc. v. NewVector Communications, Inc., 892 F.2d 62, 63 (9th Cir. 1989); Southern Pac. Communications Co. v. AT&T, 740 F.2d 980, 1000 (D.C. Cir. 1984), cert. denied, 470 U.S. 1005; Illinois ex rel. Hartigan v. Panhandle E. Pipe Line Co., 730 F. Supp. 826, 903 (C.D. Ill. 1990), aff'd sub nom. Illinois ex rel. Burris v. Panhandle E. Pipe Line Co., 935 F.2d 1469 (7th Cir. 1991), cert. denied, 502 U.S. 1094 (1992). The unmistakable rising tide of competitive entry undercuts the relevance of historical market shares.

[243] California Public Utilities Commission, Telecommunications Division, Pacific Bell (U 1001 C) and Pacific Bell Communications Notice of Intent to File Section 271 Application

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Focal Communications, GST, Level 3 Communications, MGC, NEXTLINK and WinStar all launched facilities-based service in California.[244] In Chicago, wireless CLECs like Teligent and WinStar are joining the numerous wireline CLECs already operating in that city.[245]

Most CLECs have opted to focus their efforts on large business customers — the highest-revenue and the most profitable customers, and the customers that ILECs would most firmly hold on to if they could. As the Commission has frequently noted, competitors have nonetheless made rapid inroads in this market.[246] If competition has been slower to arrive in residential markets, it is because competitors see them as less profitable — or, in some cases, want to assure that SBC and Ameritech are not permitted to provide in-region interLATA service — and have deliberately chosen not to serve them.

In any event, there is no reason at all to believe that the merger will slow down the market-opening process. This Commission, state regulators, consumer groups and competitors will continue to scrutinize ILEC conduct and demand scrupulous compliance with market-opening mandates. If the comments filed in this proceeding demonstrate nothing else, they demonstrate that the competitors know how to represent themselves vigorously before regulators. The SBC and Ameritech companies will continue to implement the requirements of Sections 251

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for InterLATA Authority in California, Initial Staff Report, 78 (July 10, 1998). This is in addition to the many CLECs reselling service.

[244] See Gilbert/Harris Reply Aff. ¶ 69.

[245] See notes 228 and 229, above; WinStar Press Release, Winstar — "The New Phone Company" — Debuts in Chicago (April 3, 1997) available at <http://www.winstar.com/chicago.htm> (visited Nov. 13, 1998).

[246] See, e.g , MCI/WorldCom ¶¶ 172-82; see also Kahan Reply Aff. ¶ 37.

and 252 of 1996 Act. As it did in SBC/Telesis and BA/NYNEX,[247] the Commission should categorically reject the invitation to conduct a shadow Section 271 proceeding in deciding whether to approve the transfer of licenses at issue in this merger.[248]

b. "Big Is Bad" Arguments Have No Merit

Several commenters argue that the merger is bound to harm local exchange competition simply because the combined company will be bigger — because it will serve more local access lines.[249] The most vocal proponents of this "big is bad" theory are the major interexchange carriers — huge global firms that are themselves growing rapidly through mergers and joint ventures.

MCI WorldCom concedes that "there is a demand for 'national local' or 'regional local' service;" it further concedes that facilities-based competitors "will have a significant competitive advantage."[250] But neither MCI WorldCom nor any of the other commenters presents any evidence why a large company — a company better positioned to offer national service over its own facilities — will be able to do anything but compete more effectively to meet this demand.

Several commenters advance the theory that a reduction in the number of RBOCs will facilitate coordinated behavior among them.[251] This conjecture presumes that SBC/Ameritech's

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[247] BA/NYNEX ¶ 203; SBC/Telesis ¶ 88.

[248] See Time Warner Telecom at 2-3; see also CoreComm Newco at 17; Texas Public Utility Comm'n at 4-6; Telecomm. Resellers Ass'n at 19; Texas Office of Public Utility Counsel at 19.

[249] See AT&T at 6-22; MCI WorldCom at 3-26; Sprint at 20-32; Consumer Coalition at 13, 26; Swidler Group (CoreComm Newco at 12-16, Focal Communications at 10, Hyperion Telecomm. at 2-5; Level 3 Communications at 3).

[250] MCI WorldCom at 10-11.

[251] See, e.g., MCI WorldCom at 15-17; Swidler Group (Corecomm Newco at 13; Focal Communications at 10-11, 17; Hyperion Telecomm. at 6-8; McLeod USA at 3-4; Level 3 Communications at 6-7).

National-Local Strategy is a pure fraud, a presumption that the Commission has no basis to indulge and must reject out of hand. The National-Local Strategy in fact commits SBC/Ameritech to swift, substantial entry into the local exchange markets of Bell Atlantic, GTE, BellSouth, U S West, Sprint, Cincinnati Bell and Frontier. As several commenters concede, what will in fact ensue is not tacit coordination but vigorous competitive responses.[252] Indeed, Bell Atlantic/GTE has already announced plans to enter the SBC and Ameritech regions. This phenomenon will only intensify as competition by the new SBC helps free other Bell Companies from section 271 restrictions.[253]

Other commenters argue that the merger will "entrench" the merged firm. MCI WorldCom complains that SBC will somehow "lock up a critical group of local customers."[254] But MCI WorldCom never explains how these customers — which it describes as "sophisticated business customers,"[255] the ones that are already being targeted by MCI WorldCom and other CLECs — will be "lock[ed] up."[256] The Commission has recognized — and some commenters rightly concede — that competition for these customers is robust.[257]

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[252] See Swidler Group (CoreComm Newco at 13-14; Focal Communications at 10-11; Hyperion Telecomm. at 6; Level 3 Communications at 4-5). SBC's commitment to the National-Local Strategy, the rapid new entry into the business, the presence of other firms who have no incentive to coordinate their behavior with SBC/Ameritech, and the difficulty in reaching terms of coordination, all make a collusion theory fanciful. See Gilbert/Harris Reply Aff. ¶¶ 64-67; Carlton Reply Aff. ¶¶ 66-71.

[253] Carlton Reply Aff. ¶ 83.

[254] MCI WorldCom at 10.

[255] MCI WorldCom at 11.

[256] MCI WorldCom at 10

[257] MCI/WorldCom ¶ 173. See Focal Communications at 10-12; Level 3 Communications at 4-5.

Another group of opponents goes so far as to argue that economies of scope and scale are to be disfavored by the Commission because they raise barriers to entry.[258] These claims are unsupported and they misconceive the public interest.[259] The Commission's obligation is to protect consumers, not particular competitors.[260] If the merger in fact allows SBC to provide better service at lower cost, it should be approved for that reason alone. Economies of scale or scope are positive goods that the Commission should assiduously promote. The law recognizes that mergers that produce more efficient firms enhance consumer welfare. Courts routinely reject challenges to mergers based on the fact that by creating efficiencies they will "entrench" the acquiring firm's market position.[261]

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[258] For example, Consumer Federation of American/Consumers Union argue that the merger will produce economies of scale and scope, and worries that competitors will be unable to match these advantages. Consumer Federation of America/Consumers Union at 25. Similarly, e.spire claims that the merger will create "a giant among giants," acknowledging that other large competitors exist. e.spire Communications at 11.

[259] See Carlton Reply Aff. ¶ 64 ("A competitive advantage that benefits consumers is procompetitive, even if MCI WorldCom loses business.").

[260] See, e.g., In re Infonxx, Inc. v. New York Telephone Co., Memorandum Opinion and Order, File No. E-96-26, FCC 97-359, 1997 WL 621592, ¶ 21 (Oct. 10, 1997); In re Telecommunications, Inc., and Liberty Media Corp., Memorandum Opinion and Order, 9 FCC Rcd. 4783 ¶ 21 & n.52 (1994); In Re Applications of Contel Corp. and GTE Corp., Memorandum Opinion and Order, 6 FCC Rcd. 1003, ¶ 17 (1991); see also Brown Shoe Co. v. United States, 370 U.S. 294, 320 (1962).

[261] See, e.g., Cargill, Inc. v. Monfort of Colorado, Inc., 479 U.S. 104, 115-17, 122 (1986) (rejecting contention that plaintiff in merger case could show competitive injury from competitor's increased efficiency); United States v. Syufy Enterprises, 903 F.2d 659, 668-69 (9th Cir. 1990) ("an efficient, vigorous, aggressive competitor is not the villain antitrust laws are aimed at eliminating"); Alberta Gas Chems. v. E.I. duPont de Nemours & Co., 826 F.2d 1235, 1239 (3d Cir. 1987), cert. denied, 486 U.S. 1059 (1987); Emhart Corp. v. USM Corp., 527 F.2d 177, 181 (1st Cir. 1975); United States v. Tidewater Marine Servs., Inc., 284 F. Supp. 324, 341 (E.D. La. 1968) ("we do not feel that economies of size alone can be any basis for invoking the antitrust laws").

c. The Specific Allegations Against The Applicants Do Not Provide A Basis For Denying Or Conditioning The Approval Of The Merger

As has become routine in transfer of control proceedings, competitors of SBC and Ameritech seize the opportunity to revisit every dispute anyone has ever had with the Applicants, in the marketplace, before state regulators, or before the Commission itself, whether of recent vintage or not. A few consumer groups, likewise, seek to use this proceeding to air-old grievances that have been raised in other forums. These extraneous complaints provide no reason for disapproving or conditioning the merger.

We respond in summary format to the laundry list of allegations in Appendices A and B to this Reply. As the Commission has repeatedly held in past cases, these issues are not properly resolved in this proceeding, whatever their merit or lack thereof.[262] As stated in SBC/SNET, "[t]he Commission has regularly declined to consider in merger proceedings matters that are the subject of other proceedings before the Commission because the public interest would be better served by addressing the matter in the broader proceeding of general applicability."[263] And the Commission must, of course, reject out of hand the suggestion that the Applications may be denied or subjected to conditions because of judicial challenges SBC and Ameritech have brought to various regulatory rulings. As the Commission well knows, such challenges are a

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[262] SBC/Telesis ¶ 38 (refusing to consider extraneous allegations, preferring to rely on "the specific enforcement tools that Congress has given" and the tools available to state commissions); In re Applications of Craig O. McCaw and American Tel. & Tel. Co., Memorandum Opinion and Order, 9 FCC Rcd. 5836, ¶ 123 (1994) ("AT&T/McCaw"); aff'd sub nom. SBC Communications Inc. v. FCC, 56 F.3d 1484 (D.C. Cir. 1995); see also BA/NYNEX ¶ 210.

[263] SBC/SNET ¶ 29; see also AT&T/McCaw ¶ 123 (FCC "will not consider arguments in [merger] proceeding[s] that are better addressed in other Commission proceedings, or other legal fora, including the [courts] and the Congress."); BA/NYNEX ¶ 210; MCI/WorldCom ¶ 215 n.628; cf. SBC/Telesis ¶ 38.

normal, lawful and constitutionally protected corollary of the administrative process.[264] They cannot be a basis for denying the Applications or imposing conditions.

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In sum, the merger will have no adverse effects, and will produce many positive benefits, for competition in local exchange and exchange access services.

2. Long Distance Market

As we have demonstrated, the merger will enable SBC to make a broad, facilities-based entry into 30 new markets, providing not only local exchange but also other services, particularly long distance. This will inject additional competition into the long distance market, especially for residential customers, and help break up the long-running oligopoly in that market. Once SBC/Ameritech is able to provide in-region interLATA service, the benefits will multiply.

Several competitors again advance the tired argument that the merger will somehow increase the risk of a "price squeeze" or other discriminatory behavior aimed at long distance carriers.[265] We answered those contentions in Section III.C, above. As the Commission has done in the past, it should again reject these speculative arguments as grounds for disapproving

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[264] SBC/Telesis ¶ 37 (conduct complained of "consists of either constitutionally protected free speech or business conduct that is legally permissible"). Similarly, the Commission has long recognized that it cannot and should not sanction its licensees for filing pleadings, lobbying and taking other actions at the Commission and with other federal, state and local governmental bodies to protect their competitive positions. See In re Referral of Questions From General Communications, Inc. v. Alascom, Inc., Memorandum Opinion and Order, 4 FCC Rcd. 7447, ¶¶ 8-10 (1988); In re Application of United Transmission Inc. and United Tel. Co. of Missouri, Memorandum Opinion and Order, 67 F.C.C.2d 662, ¶ 18 (1978).

[265] Sprint at 21, 25; AT&T at 31-33; MCI WorldCom at 24-26.

the merger.[266] The merger will have no adverse effects on long distance markets.[267]

3. Bundled Services

The merger will clearly increase competition in the emerging market for "bundled" local exchange, long distance and other services. As Chairman Kennard has recognized, consumers are seeking the opportunity to obtain bundled services.[268] The National-Local Strategy will introduce SBC as a strong new provider of bundled services in the out-of-region markets it will enter as a result of the merger. Upon receiving in-region interLATA authority, SBC will be able to provide similar packages of services to its in-region customers in competition with the major

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[266] SBC/Telesis ¶¶ 45, 50; BA/NYNEX ¶¶ 115-20.

[267] MCI WorldCom speculates that the merger could increase the risk of harm to long distance competition if the combined SBC/Ameritech engaged in the "grooming" of U.S. inbound international traffic. MCI WorldCom at 26 n.30. As MCI acknowledges, the Commission is currently examining "grooming" arrangements in a separate proceeding. See In re 1998 Biennial Regulatory Review — Reform of the International Settlements Policy and Associated Filing Requirements, Notice of Proposed Rulemaking, IB Docket No. 98-148, FCC 98-190, 1998 WL 454842, ¶ 43 (rel. Aug. 6, 1998) ("ISP Reform Proceeding"). SBC/Ameritech will comply with any rules ultimately adopted, but the merger is not the appropriate forum within which to litigate this issue. In the interim, as the Commission noted in a recent proceeding declining an MCI request to impose "a generalized prohibition on BOCs entering into grooming arrangements," the rules already contain various safeguards with respect to grooming. In re Bell Operating Company Provision of Out-of-Region Interstate, Interexchange Services, Order on Reconsideration, CC Docket No. 96-21, FCC 98-272, 1998 WL 726734, ¶¶ 11-13 (rel. Oct. 20, 1998).

[268] William E. Kennard, Chairman, Federal Communications Commission, Statement on Section 271 of the Telecommunications Act of 1996 Before the Senate Subcommittee on Communications, Committee on Commerce, Science, and Transportation (Mar. 25, 1998), available at <http://www.fcc.gov/Speeches/Kennard/Statements/stwek817.txt> (visited Nov. 11, 1998). Likewise, one consultant reports, "[r]ecent surveys show that 69% of consumers want a single statement from their provider." Jennifer Taylor, Convergence with Care, Telephony, July 27, 1998, available at 1998 WL 6611503.

IXCs and other CLECs.[269] In addition, the merger will enable SBC/Ameritech to compete more effectively in offering global seamless services to multinational customers.[270]

Sprint alleges that the merged company will "'deny, delay or degrade' access" especially with regard to the provision of combined services, including in particular Sprint's new ION service.[271] This argument is merely another incantation of Sprint's access discrimination argument, which we have rebutted in Section III.C, above, and is contradicted by Sprint's own public statements.[272] The merger will not impede the introduction of new services by competitors. Instead, it will facilitate the introduction of new services by SBC/Ameritech.

4. Internet Services

MCI WorldCom is the only commenter that even attempts to raise competition concerns in Internet services. Its comments provide no basis to conclude that the proposed merger will harm competition in this market.[273] In the few paragraphs that do discuss the effects of the

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[269] Competitors are offering such bundles today. See Kahan Reply Aff. ¶¶ 5-8.

[270] See Public Interest Statement at 98-100.

[271] Sprint at 22, 26-27. Katz/Salop Decl. ¶ 16. Specifically, Sprint argues that the new SBC would have the incentive and ability to refuse or delay unspecified new types of access and interconnection that it claims will be needed to implement its Sprint ION (bundled) service. As we have shown, these arguments are entirely theoretical and seriously flawed. See Section III.C above; Schmalensee/Taylor Reply Aff. ¶¶ 48-49.

[272] See Sprint Press Release, note 44 above.

[273] MCI WorldCom's Internet discussion is, for the most part, a jumble of the company's views on various issues and proceedings that are in no way related to this merger. It discusses the following irrelevant issues and proceedings: whether BOC provision of Internet access violates section 271, MCI WorldCom at 36 n.42; various section 251 issues under consideration in CC Docket No. 98-147, id. at 40-42; allegations of various state commissions concerning U S West's xDSL offerings, id. at 43-44; the Commission's consideration (in CC Docket No. 96-262) of whether to impose access charges on ISPs, id. at 37, 46-48; section 706 issues under consideration in CC Docket No. 98-147, id. at vi-vii, 43-44; and the Bell Atlantic/GTE merger, which is not relevant to this merger, id. at 45-47.

merger, MCI WorldCom argues that it "will significantly increase the percentage of Internet customers to which SBC-Ameritech controls access,"[274] and thus give the merged "firm further power over Internet services."[275]

MCI WorldCom's argument fails on a number of grounds. First, the foundation of MCI WorldCom's argument — that an incumbent LEC can leverage its "bottleneck" to impede competition in the market for Internet access[276] — is empirically false.[277] There are over 5,000 ISPs nationwide,[278] and, although ILECs have been providing Internet access for some time, no ILEC — SBC and Ameritech included — has even come close to obtaining power in that market.[279] Today, SBC and Ameritech have fewer than 1 percent of Internet subscribers

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[274] MCI WorldCom at 45.

[275] MCI WorldCom at 35. MCI WorldCom also speculates that approving both this merger and the Bell Atlantic-GTE merger would "increase substantially" the risk of coordinated interaction as "SBC-Ameritech and Bell Atlantic-GTE could agree to exchange Internet traffic with each other on more favorable terms than they exchange traffic with non-bottleneck ISPs." MCI WorldCom at 45. This far-fetched hypothesis hinges on an unrelated merger, and is wrong. SBC/Ameritech and Bell Atlantic/GTE will be direct competitors and, even after their respective mergers, would each still be relatively small providers of Internet access.

[276] See MCI WorldCom at 38.

[277] See Gilbert/Harris Reply Aff. ¶¶ 81-83. MCI WorldCom also claims that "[t]he ability of ILECs to leverage their monopoly control over local services into market power over Internet services will be increased if they succeed" in their efforts to impose access charges on ISPs. MCI WorldCom at 46. The ISP access charge issue is of absolutely no relevance to this merger. See Gilbert/Harris Reply Aff. ¶¶ 85-87.

[278] See The List — The Definitive ISP Buyer's Guide, available at <http://thelist.internet.com> (visited Nov. 13, 1998).

[279] There are over 650 different ISPs in Ameritech's region, and over 800 in SBC's region. The four largest ISPs in the country are America Online, Microsoft (MSN), Prodigy and AT&T. See L. Trager & R. Barrett, Earthlink, Sprint Pool Net Services, Inter@ctive Week, Feb. 16, 1998 (citing Arlen Communications), available at <http://www.zdnet.com/intweek/print/980216/285890.html> (visited Nov. 13, 1998).

nationwide.[280] MCI WorldCom's own economists state in their affidavit that SBC and Ameritech "are not now competitors for control of the 'last mile' of Internet access in any area, and they are each minor ISP players."[281]

Second, there is no basis for MCI WorldCom's claim that ILECs' control over the Internet will increase with "the emergence of high-speed digital loop services as an important method of Internet access," nor is this issue relevant to the merger.[282] As demonstrated in the Applications, the market for high-speed data services, though still in its infancy, already exhibits unprecedented competition from numerous digital broadband providers.[283] Cable modem access is an especially potent alternative; as AT&T's Chairman and Chief Executive Officer recently said, "When it comes to cable-based Internet services and access, we can offer consumers broadband service at equivalent or lower cost than what they're paying for narrowband services

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[280] See S.M. Passoni, SG Cowen Securities Corp., Telecom —RHCs Offer Compelling Value, Investext Rpt. No. 2606297 at *9 (July 31, 1998) (estimating companies' internet subscribers); Cyber Dialogue, The 1998 American Internet User Survey (Jul. 15, 1998) (49.4 million Internet users nationwide).

[281] MCI WorldCom, Baseman/Kelley Decl. at ¶ 105 (emphasis added). MCI WorldCom's contentions here are completely contrary to its own previous statements about the Internet. See, e.g., MCI WorldCom, MCI WorldCom Answers to Internet Concentration Concerns, available at <www.mci.com/aboutyou/interests/ publicpol/merger/intfinal.shtml> (visited Nov. 5, 1998) ("The Internet is inherently competitive."); C. Wilder & J. Sweat, MCI's Roberts Defends Merger with WorldCom, CMP Tech Web, Apr. 22, 1998, available at 1998 WL 92953620 ("The Internet is simply too large and moving too fast to be dominated by any one player.").

[282] MCI WorldCom at 35. The issue of ILEC deployment of advanced services, including xDSL, is the subject of two ongoing proceedings (in CC Docket Nos. 98-146 and 98-147), neither of which is relevant here. The Commission has in fact stated that in one of these proceedings that it wishes "to encourage and enable all companies, both incumbents and new entrants, to provide these advanced services [including xDSL]." See In re Deployment of Wireline Services Offering Advanced Telecommunications Capabilities, Memorandum Opinion and Order and Notice of Proposed Rulemaking, CC Docket No. 98-147, FCC 98-188, 1998 WL 458500, ¶ 10 (released Aug. 7, 1998) (emphasis added).

[283] Public Interest Statement at 94-96.

today."[284] Other access alternatives include wireless access providers,[285] satellite operators[286] and competitive "data" or "packet" LECs.[287]

Finally, it is particularly ironic to find MCI WorldCom claiming that SBC/Ameritech might obtain enough power to increase the costs of its rivals by imposing discriminatory interconnection charges for peering.[288] Unlike MCI WorldCom, neither SBC nor Ameritech operates a regional or national Internet backbone. Without a backbone, the companies cannot become a major aggregator of Internet traffic and therefore cannot exert leverage over competing ISPs to extract interconnection fees.[289] SBC/Ameritech's plan to create a nationwide IP-based

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[284] C. Michael Armstrong, Telecom and Cable TV: Shared Prospects for the Communications Future, Remarks to the Washington Metropolitan Cable Club (Nov. 2, 1998). See also MCI WorldCom, Baseman/Kelley Decl. ¶ 101 n.52 ("[t]he problem is ameliorated if other technologies emerge to provide broadband access for ISPs"). Those technologies have emerged. There are at least 37 cable operators offering cable modem service in SBC's and Ameritech's combined region, including TCI and Time Warner, who intend to join forces with AT&T in order to expand and expedite these offerings significantly. See Gilbert/Harris Reply Aff. ¶ 81.

[285] See Gilbert/Harris Reply Aff. ¶ 81.

[286] See Gilbert/Harris Reply Aff. ¶ 81. Hughes Network Systems offers high-speed Internet access via DBS satellite to households (particularly rural ones) and small businesses throughout the United States. See, e.g., Internet Access and Pricing, Telecommunications, Feb. 1, 1997, at 41, available at 1997 WL 9774332.

[287] There are at least 22 competing xDSL providers in SBC's and Ameritech's combined region. See ADSL Forum, ADSL Service Deployments, Oct. 6, 1998, available at <http://www.adsl.com/service_matrix.html#us> (visited Oct. 29, 1998). See also Gilbert/Harris Reply Aff. ¶ 82. MCI's statement that the companies "now and for some time to come . . . will have a virtually complete monopoly over these services," MCI WorldCom at 40 (emphasis added), is then completely baseless.

[288] MCI WorldCom at 38-48, Baseman/Kelley Aff. ¶¶ 102-09.

[289] See MCI/WorldCom ¶ 148 ("there do not appear to be good demand substitutes for ISPs and regional backbone service providers to obtain national Internet access without access to IBPs."); Gilbert/Harris Reply Aff. ¶ 90.

network does not change this result, given the presence of other established, vertically integrated Internet providers such as MCI WorldCom, Sprint and AT&T.[290]

5. Wireless Services

As described in the Public Interest Statement, the merger will benefit competition in wireless markets.[291] No commenter has shown that the merger will have any anticompetitive effect in any wireless markets.[292] These wireless benefits reinforce the conclusion that the merger is in the public interest.[293]

6. Video Services

Sprint's assertions that the merger will violate Section 652 of the Communications Act, 47 U.S.C. § 572, and will harm competition in video services markets are groundless.[294]

Sprint contends that Section 652, which prohibits local exchange carriers from buying cable operations in their telephone service areas, bars SBC from buying Ameritech because

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[290] See Gilbert/Harris Reply Aff. ¶¶ 89-90.

[291] Public Interest Statement at 59-60, 92-94.

[292] Where Ameritech and SBC have cellular licenses in the same market, they will divest one of the licenses, in accordance with Commission regulations. See Public Interest Statement at 59-60. The Consumer Coalition states that the merger will "eliminate" the cellular competition between SBC and Ameritech, Consumer Coalition at 14, without appreciating that the sale of an overlapping license to a third party means that there will be no resulting loss of competition in any market. The allegations of the Paging and Messaging Alliance ("PMA") concerning the compensation issues between SBC and paging providers are without merit and, in any event, irrelevant to this transfer of control proceeding. See SBC/SNET ¶ 34 (noting that issue is subject of pending docket and "does not provide a basis for concluding that the proposed merger does not serve the public interest.").

[293] Cf. SBC/SNET ¶ 45; In re Bell Atlantic Mobile Systems, Inc. and NYNEX Mobile Communications Co., Order, 10 FCC Rcd. 13368, ¶ 48 (1995).

[294] See Sprint at 41-47.

Ameritech has built — not bought — competing cable systems in its own — not SBC's — telephone service areas. Sprint's interpretation of Section 652 is unsupportable.

Section 652 states, in relevant part, that no local exchange carrier "may purchase or otherwise acquire directly or indirectly more than a 10 percent financial interest, or any management interest, in any cable operator providing cable service within the local exchange carrier's telephone service area."[295] Section 652 defines "telephone service area" to mean

> the area within which such carrier provided telephone exchange service as of January 1, 1993, but if any common carrier after such date transfers its telephone exchange facilities to another common carrier, the area to which such facilities provide telephone exchange service shall be treated as part of the telephone service area of the acquiring common carrier and not of the selling common carrier.[296]

Section 652 was intended to prohibit a local exchange carrier from acquiring monopoly cable systems within its service area, subject to certain exceptions. Ameritech has not acquired cable systems within its service area. Instead, Ameritech has built and is building its own cable systems. The merged SBC/Ameritech will continue to own those same cable properties and will not acquire an interest in any other cable properties in Ameritech's service area as a result of the merger.

Nevertheless, Sprint suggests that because SBC's telephone service area will be deemed to include Ameritech's telephone service area after the merger, Section 652 prohibits SBC from merging with Ameritech. Sprint disregards the fact that Ameritech's local exchanges will not become part of SBC's "telephone service area" except as part of the same transaction in which

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[295] 47 U.S.C. § 572(a).

[296] Id. § 572(e).

Ameritech's cable systems will ultimately be owned by SBC. By defining "telephone service area" to include exchanges subsequently acquired by a common carrier, Congress simply made sure that the purpose of Section 652 would not be defeated by creating a loophole whereby one ILEC could acquire another and later purchase cable systems in the acquired carrier's telephone service area. In contrast, if a common carrier enters new markets as a competitor, rather than through acquisition, those markets would not be considered part of its "telephone service area" for purposes of Section 652, and it would not be prohibited from acquiring cable systems in those markets.

As applied to the SBC/Ameritech merger, the plain language of Section 652 suggests only two things. First, Ameritech may not acquire cable systems from cable operators within its telephone service area as such area existed on January 1, 1993.[297] Second, after the merger between SBC and Ameritech, Ameritech's telephone service area shall be treated as SBC's telephone service area. Hence, after the merger, SBC would be subject to the same prohibition on the acquisition of cable systems in that telephone service area as Ameritech. Nothing in Section 652 suggests that SBC is prohibited from acquiring as part of the merger any cable systems operated by Ameritech outside of SBC's current telephone service areas.

Sprint's contrary interpretation of Section 652 is not supported by the legislative history[298] and is inconsistent with Commission precedent. Just last month, the Commission

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[297] Except to the extent that Ameritech had transferred any local exchanges to another carrier subsequent to that date.

[298] See H.R. Rep. No. 104-458, 104th Cong. (1996); S. Conf. Rep. 104-230, 104th Cong. (1996); S. Rep. 104-23, 104th Cong. (1995); H.R. Rep, 104th Cong., 104-204 (1995); In re Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996, Order and Notice of Proposed Rulemaking, 11 FCC Rcd. 5937, ¶¶ 43-45 (1996). Sprint attempts to support its theory by citing the legislative history of a different bill, which was never enacted.

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approved SBC's acquisition of Southern New England Telecommunications Corporation ("SNET"), despite the fact that SNET owns a cable television system within its telephone service area.[299] The Commission's order did not prohibit SBC from acquiring SNET on the basis of Section 652, nor did the order suggest Section 652 was even relevant for purposes of determining whether to approve the acquisition. Section 652 is likewise irrelevant to this proceeding.

Opponents of the SBC/Ameritech merger also speculate that it would result in the reduction of competition in the video services market based on fears that SBC will curtail Ameritech's cable operations.[300] These contentions are mistaken for two reasons. First, the SBC/Ameritech merger will not affect the obligations of Ameritech New Media ("ANM") to manage and operate its cable systems. Instead, the merger will simply change the ultimate corporate parent of ANM from Ameritech to SBC. Second, despite contentions that SBC has no interest in video services, SBC offers DBS service and continues to evaluate other video opportunities in its region. Moreover, ANM has experience, personnel and an excellent reputation in the video services market. Accordingly, SBC has made no plans regarding changes to ANM or its operations, and intends merely to evaluate ANM's ongoing performance once detailed post-merger planning can occur.[301] A similar arrangement was approved by the

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Moreover, the passage Sprint cites provides no support for its contention that SBC cannot acquire cable systems in Ameritech's service area. Sprint at 44 n.66.

[299] See SBC/SNET ¶ 5.

[300] Sprint at 44; National Ass'n of Telecomm. Officers and Advisors at 1-3; see also Village of Schiller Park.

[301] Some commenters also have pointed to state proceedings regarding ANM's "AmeriChecks" program and certain disputes related to allegedly discriminatory pole attachments permitted by Ameritech operating companies. See Time Warner Telecom at 8; Michigan Consumer Federation at 12. Proceedings regarding the AmeriChecks program are currently pending in Michigan and Ohio, and the Public Utility Commission of Ohio has dealt with the pole

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Connecticut Department of Public Utility Control in the recent merger involving SBC and SNET.[302]

7. Alarm Monitoring

Contrary to the arguments of the Alarm Industry Communications Committee ("AICC"), Section 275 of the Communications Act does not prohibit the transfer of control of Ameritech's subsidiaries, including SecurityLink from Ameritech, Inc. ("SecurityLink") to SBC. Section 275(a)(1) states in relevant part that "[n]o Bell operating company or affiliate thereof shall engage in the provision of alarm monitoring services before" February 8, 2001.[303] Section 275(a)(2), however, sets out an exception to this general prohibition, categorically exempting any Bell operating company or affiliate that was providing alarm monitoring services as of November 30, 1995 from the prohibition in Section 275(a)(1).[304] The Commission has found that Ameritech is exempted under Section 275(a)(2).[305]

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attachment issues. These matters are appropriately left to the states for resolution and should not be part of this proceeding before the Commission. Further details regarding these issues are set forth in the accompanying Appendix A.

[302] See Connecticut Department of Public Utility Control Joint Application of SBC Communications Inc. and Southern New England Telecommunications Corp. for a Change in Control, Decision, Docket No. 98-02-20, at 49, 50, 68 (Sept. 2, 1998).

[303] 47 U.S.C. § 275(a)(1).

[304] See 47 U.S.C. § 275(a)(2); see also In re Implementation of the Telecommunications Act of 1996: Telemessaging, Electronic Publishing, and Alarm Monitoring Services, Second Report and Order, 12 FCC Rcd. 3824, ¶ 42 (1997) ("Alarm Monitoring Order").

[305] Alarm Monitoring Order, 12 FCC Rcd. 3824 at ¶ 33. The Commission's finding that "Ameritech" qualified for "grandfathered" treatment under 275(a)(2) necessarily included not only Ameritech but SecurityLink and the various Ameritech Bell operating companies. Accordingly, references herein to Ameritech includes SecurityLink and the Ameritech Bell operating companies. See also Alarm Ind. Communications Comm. at 4.

AICC argues that Ameritech will lose its "grandfathered status" if control of the Ameritech subsidiaries transfers to SBC.[306] Therefore, according to AICC, because SBC did not qualify for the exception under Section 275(a)(2), it may not acquire Ameritech's alarm monitoring business. Thus, although AICC does not oppose the Commission's granting of the Applications, it asks that Ameritech be required to divest its alarm monitoring business prior to consummation.[307] AICC's reading of Section 275(a)(2) is unsupported by the plain language of the statute and ignores established Commission precedent concerning the effect of a transfer or assignment of a Bell operating company under Section 153(4) of the Act.

AICC's entire argument rests on its unsupported conclusion that Ameritech will lose its grandfathering if control passes to SBC.[308] AICC cites no statutory or case law support, and nothing in Section 275 lends any support for such a conclusion. The only condition for qualifying for the grandfathering exception under Section 275(a)(2) is that a Bell operating company directly or through an affiliate has been providing alarm monitoring services as of November 1995.[309] "Control" simply is not a statutory condition for qualifying under Section 275(a)(2) — a Bell operating company or its affiliate was either providing alarm

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306 Alarm Ind. Communications Comm. at 5.

307 Alarm Ind. Communications Comm. at 9.

308 Alarm Ind. Communications Comm. at 6. The Alarm Industry Communications Committee's reference to the Show Cause Orders in FCC 98-226 and FCC 98-148 to support its unfounded reading of Section 275(a)(2) is unavailing. See Alarm Ind. Communications Comm. at 6. The issues in those dockets are simply not germane to this proceeding. See AT&T/McCaw ¶¶ 70, 86; BA/NYNEX ¶ 210. In any event, nothing in those dockets undermines the effect of the Commission's previous finding that Ameritech is grandfathered under Section 275(a)(2).

309 47 U.S.C. § 275(a)(2).

monitoring services in 1995 or not.[310] AICC admits that Ameritech was providing alarm monitoring services as of November 1995 — the merger will not change this fact.[311] Thus, Ameritech will continue to be grandfathered pursuant to Section 275(a)(2).

Moreover, as a successor to Ameritech's interests, SBC is permitted by Section 275 to own SecurityLink. Section 153(4) defines the term "Bell operating company" as one of the companies named in Section 153(4)(A) and "any successor or assign of any such company that provides wireline telephone exchange service. . . ."[312] When a company acquires a Bell operating company, it becomes the "successor or assign" of the acquired BOC under Section 153(4)(B).[313] SBC's acquisition of Ameritech is no different — upon consummation of

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[310] Neither the SBC nor the Ameritech holding companies are "Bell operating companies" under Section 153, but they are affiliates of Bell operating companies for purposes of Section 275. See 47 U.S.C. § 153(1) (defining the term "affiliate"). Of course, Ameritech's Bell operating company subsidiaries will continue to exist after the merger.

[311] To effect the merger SBC will create a new wholly-owned subsidiary, and Ameritech will merge into and with the newly-formed subsidiary with Ameritech surviving under the control of SBC. See SBC/Ameritech Merger Applications, Agreement and Plan of Merger (attachment to Applications). The Communications Act could not be clearer: Ameritech and its successors and assigns satisfy the conditions of Section 275(a)(2). See also 47 U.S.C. § 153(4) (defining Bell operating company).

[312] 47 U.S.C. § 153(4)(A), (B).

[313] See In re Implementation of the Non-Accounting Safeguards of Sections 271 & 272 of the Communications Act of 1934, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd. 21905, ¶ 69 n.149 (1996) ("Non-Accounting Safeguards Order") (stating that when one BOC acquires another, pursuant to 47 U.S.C. § 153(4)(B), "the surviving BOC shall become the successor or assign of the acquired BOC."); see also In re Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan, Memorandum Opinion and Order, 12 FCC Rcd. 20543, ¶ 349 n.896 (1997) (noting that section 153(4) explicitly states that "'Michigan Bell Telephone' and its successor (Ameritech Michigan) is a 'Bell operating company'") (quoting 47 U.S.C. § 153(4)); id. ¶ 373 (recognizing that any successor or assign of a Bell operating company "is subject to the section 272 requirements in the same manner as the BOC") (quoting Non-Accounting Safeguards Order, 11 FCC Rcd. 22054). Cf. 47 U.S.C.A. § 251(h)(1) (defining "incumbent local exchange carrier" as including a person or entity that became a successor or assign of a member of the exchange carrier association on or after February 8,

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the merger, SBC will be a successor to Ameritech's interests, including Ameritech's grandfathered rights under Section 275(a)(2) to provide alarm monitoring services. Thus, the merger is wholly consistent with Section 275 of the Communications Act.

Congress carved out an express exception in Section 275(a)(2) to the general prohibition of BOC provision of alarm monitoring precisely to ensure that the Act would not result in forced divestitures. Thus, AICC's request for divestiture of Ameritech's alarm monitoring business should be denied.

IV. THE COMMISSION SHOULD APPROVE THE APPLICATIONS UNCONDITIONALLY AND EXPEDITIOUSLY

A. There Is No Basis To Impose Conditions On The Merger

Competitors of SBC and Ameritech ask this Commission to impose conditions on the approval of this merger.[314] The only effect of the proposed conditions would be to delay SBC/Ameritech's competitive entry into new markets and to limit the company's ability to deploy new services to customers nationwide and beyond. Most of these conditions relate to matters properly raised in other forums, and the Commission has repeatedly rejected other

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1996); In re Deployment of Wireline Services Offering Advanced Telecommunications Capability, Memorandum Opinion and Order and Notice of Proposed Rulemaking, CC Docket No. 98-147, FCC 98-188, 1998 WL 458500, ¶ 113 (released Aug. 7, 1998) (tentatively concluding that if an incumbent local exchange carrier sells or conveys to an advanced services affiliate central offices or real estate where there is telecommunications service equipment being used, then the affiliate would become an assign of the incumbent).

[314] See, e.g., e.spire Communications at 16-18; Level 3 Communications at 36-41; Supra Telecom & Info. Sys. at 14-17; Texas Office of Public Utility Counsel at 19-20; Texas Public Util. Comm'n at 6; Time Warner Telecom at 10-16.

attempts to condition license transfers in such circumstances.[315] In its recent order approving the SBC/SNET merger the Commission refused to impose conditions similar to those demanded by the Applicants' competitors in this proceeding.[316] In contrast to other mergers that were approved only subject to significant conditions, [317] the SBC/Ameritech merger entails no significant diminution of competition, actual or potential, in any market. Conditions are therefore unnecessary and inappropriate. Conditions are only imposed when they "relate[] to the potentially harmful effects of [a] merger."[318] This merger entails no such potential harms.[319]

B. There Is No Basis For Holding An Evidentiary Hearing

The Commission should summarily deny all of the requests for an evidentiary hearing[320] because they fail to comply with Section 309(d)(1) of the Communications Act, which requires

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[315] See, e.g., BA/NYNEX ¶ 215 ("We are separately considering this issue in other proceedings"); id. ¶ 226 ("We conclude that our review of the Bell Atlantic and NYNEX merger . . . is not the appropriate forum"). See Appendices A and B to this Reply.

[316] SBC/SNET ¶ 14; see also SBC/Telesis ¶ 88 ("No party has shown that Congress, in adopting the 1996 amendments to the Communications Act, intended to freeze the RBOCs in place until the amendments were fully implemented.").

[317] Cf. BA/NYNEX ¶ 14 ("We believe these conditions create pro-competitive benefits that at least in part mitigate the potentially negative impacts of the proposed merger on competition").

[318] Id. ¶ 201.

[319] Approving this merger without conditions will not leave the operating telephone companies of the merged entity unregulated. Those companies will remain subject to numerous obligations designed to assure that their markets are open and to forestall any anticompetitive activities. For example, the operating telephone companies will remain subject to service quality and reporting obligations at the state level, price cap or similar regulation of rates, the interconnection and unbundling requirements of Section 251, the separate subsidiary provisions of Section 272, and the accounting and non-accounting safeguards imposed by the Commission. Additional conditions are unwarranted.

[320] An evidentiary hearing has been requested by CoreComm Newco, Focal Communications, Hyperion Telecommunications, McLeodUSA, Michigan Consumer Federation, Parkview Areawide Seniors, and South Austin Community Coalition Council.

such requests to be supported by an affidavit.[321] As the Commission recently explained in MCI/WorldCom, "[p]arties challenging an application to transfer control by means of a petition to deny and seeking a hearing on the matter must satisfy a two-step test established in section 309(d)."[322] First, "a protesting party seeking to compel the Commission to hold an evidentiary hearing must . . . submit a petition to deny containing 'specific allegations of fact sufficient to show that . . . a grant of the application would be prima facie inconsistent with the public interest.'"[323] The allegations set forth in the petition to deny must be supported by an affidavit and must "'be specific evidentiary facts, not ultimate conclusionary facts or more general allegations.'"[324] The Commission must consider whether, if all the supporting facts alleged in the affidavit were true, a reasonable finder of fact could conclude that grant of the application would be prima facie inconsistent with the public interest.[325] Second, if the Commission determines that the petitioner has satisfied the threshold standard for alleging a prima facie inconsistency with the public interest, the Commission then must determine whether the "totality of the evidence arouses a sufficient doubt on the question whether grant of the application would serve the public interest," and if so, only then does the Commission order an evidentiary hearing.[326] In considering whether to order an evidentiary hearing, the Commission need not go beyond the first step of the analysis because not one of the parties seeking a hearing

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321 Cf. SBC/SNET ¶ 47; MCI/WorldCom ¶ 205 n.578.

322 MCI/WorldCom ¶ 202.

323 MCI/WorldCom ¶ 202 (citing Gencom Inc. v. FCC, 832 F.2d 171, 181 (D.C. Cir. 1987)).

324 SBC/SNET ¶ 46 (quoting United States v. FCC, 652 F.2d 72, 89 (D.C. Cir. 1980)).

325 MCI/WorldCom ¶ 203.

326 MCI/WorldCom ¶ 204.

has provided an affidavit establishing a specific factual dispute, which is a clear threshold requirement under Section 309(d).

V. THE MERGER IS IN THE PUBLIC INTEREST

This merger fully satisfies all elements of the Commission's public interest test. SBC is qualified to exercise control over Ameritech's FCC authorizations. The merger will promote, not inhibit, competition and will significantly benefit the public interest in other ways. These benefits of the merger will only be jeopardized by the imposition of unnecessary and inappropriate conditions. For all these reasons, the Commission should promptly and unconditionally grant the Applications.

A. SBC Is Fully Qualified To Control Ameritech's FCC Authorizations

A key consideration for the Commission in reviewing the Applications is also the most obvious: SBC is indisputably qualified to exercise control over Ameritech's FCC authorizations, and SBC's qualifications as a licensee cannot plausibly be questioned. Indeed, as recently as last month, in connection with its approval of the SBC/SNET merger, the Commission reviewed SBC's "citizenship, character, financial, technical and other qualifications," and concluded that, in light of "SBC's evident fitness to hold its current licenses," the Commission was "convinced that SBC has the requisite qualifications to hold the licenses and authorizations currently held by SNET."[327] Likewise, in connection with its approval of the SBC/Telesis merger, the Commission found that SBC is "a Commission licensee and communications carrier of longstanding" that "possesses those qualifications" needed to hold Commission licenses.[328]

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[327] SBC/SNET ¶¶ 26-27.

[328] SBC/Telesis ¶ 11.

Several commenters have sought to drag unrelated disputes with the Applicants into this merger proceeding and to use those disputes to impugn SBC's character.[329] The Commission has refused to consider such disputes in other merger proceedings, let alone find that they affect the transferee's qualifications,[330] and should decline to do so here.

B. The Procompetitive Effects Clearly Outweigh Any Alleged Anticompetitive Effects

To grant the Applications, the Commission must find not only that SBC is qualified to exercise control over Ameritech's FCC authorizations, but also that the proposed transfers serve the public interest, convenience and necessity.[331] To reach such a conclusion, the Commission is required "to weigh the potential public interest harms against the potential public interest benefits and to ensure that, on balance, the merger serves the public interest which, at a minimum, requires that it does not interfere with the objectives of the Communications Act."[332] Such an analysis "necessarily includes an evaluation of the possible competitive effects of the transfer."[333] Any potential reduction in competition is weighed against the benefits of the merger, including both increases in competition and the efficiencies to be derived from the transaction.[334] If the pro-competitive benefits of the merger outweigh any harm to competition,

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[329] Those disputes, and SBC's positions regarding them, are addressed in Section III and in Appendix B to this Reply.

[330] SBC/SNET ¶ 29; see also AT&T/McCaw ¶¶ 70, 86; BA/NYNEX ¶ 210; MCI/WorldCom ¶ 216 ("an unresolved private contractual dispute . . . is not a sufficient basis to deny the merger as contrary to the public interest").

[331] 47 U.S.C. §§ 214(a), 310(d).

[332] SBC/SNET ¶ 13.

[333] SBC/SNET ¶ 13.

[334] BA/NYNEX ¶ 37.

the merger will be found to serve the public interest, convenience and necessity.[335] "The public interest analysis may also include an assessment of whether the merger will affect the quality of telecommunications services provided to consumers or will result in the provision of new or additional services to consumers."[336]

As the Applicants have established, the merger will not produce any anticompetitive effects, but rather will substantially advance the goals of the 1996 Act by enabling the most significant increase in local competition that the industry has seen. The combined company's rapid, facilities-based entry into the top 30 U.S. markets outside its region will jump-start competition for business and residential customers throughout the U.S.[337] Implementation of this National-Local Strategy will impel other carriers, including the IXCs, the other ILECs and CLECs, to compete vigorously in their own regions and in the new SBC's in-region areas — for both business and residential customers — in order to serve their customers. These clear, merger-specific benefits illustrate how the merger serves the public interest and merits Commission approval.

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[335] BA/NYNEX ¶¶ 48, 157.

[336] AT&T/TCG ¶ 11; see also MCI/WorldCom ¶ 9; BT/MCI II ¶ 205; BA/NYNEX ¶ 158.

[337] Cf. MCI/WorldCom ¶ 199 ("WorldCom and MCI have made a sufficient showing that, as a result of combining certain of the firms' complimentary assets, the merged entity will be able to expand its operations and enter into new local markets more quickly than either party alone could absent the merger. . . . We also find persuasive Applicants' assertion that the merger will allow them to service multi-location customers over their own networks, and that this will enable such customers to receive higher quality and more reliable services than each company is currently able to offer separately.").

C. The Merger Will Produce A Broad Range Of Additional Public Interest Benefits

As demonstrated in the Applications and in Section II, above, in addition to jump-starting competition nationwide, the merger will also provide a broad range of additional public interest benefits, including the following:

- The merger will position the new SBC as a national and global competitor capable of providing the full range of telecommunications services throughout the U.S. and much of the world, thereby advancing the competitiveness of the U.S. in international telecommunications markets.[338]

- The merger will result in significant, merger-specific synergies, in the form of revenue enhancements and cost savings.[339]

- As with the SBC/SNET merger, the merger will provide the combined companies with "access to improved research capabilities," which will result in quicker deployment of advanced technologies that benefit consumers.[340]

Thus, even if the Commission were to find a potential for the merger to cause competitive harm in a given market, the Commission would have to weigh that against the overwhelming procompetitive and other benefits that the merger will provide in a great many

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[338] See Section I.C. above; see also AT&T/TCG ¶ 13 ("We also consider the likely effects of this proposed merger on international competition.").

[339] See Section II.B. above; see also BA/NYNEX ¶ 37 ("We also consider whether the proposed transaction will result in merger-specific efficiencies such as cost reductions [and] productivity enhancements.").

[340] SBC/SNET ¶ 45; see also Section II.B.; BA/NYNEX ¶ 37 ("We also consider whether the proposed transaction will result in merger-specific efficiencies such as . . . improved incentives for innovation."); SBC/Telesis ¶ 76 ("PacTel might benefit from SBC's larger research and development subsidiary without having to undertake a costly expansion on its own. The proposed transfer, by increasing SBC/PacTel's customer base, may also make feasible the development of new products and services that need a large customer base in order to be economically viable.").

telecommunications markets, in-region, throughout the country, and around the globe.[341] Any such balancing here should compel the conclusion that the Applications should be granted.

[341] As we have demonstrated above, this merger will have no anticompetitive effects. Moreover, Sprint is wrong in suggesting that the Commission must block the merger if it found anticompetitive effects in a single market, Sprint at 59-63, disregarding the net benefits in many markets as part of its ultimate balancing. See MCI/WorldCom ¶ 10 (Commission employs "a balancing process that weighs the potential public interest harms against public interest benefits"); BA/NYNEX ¶ 157 (Applicants must show that "the transaction on balance will enhance and promote, rather than eliminate or retard, competition.") (emphasis added). See also id. ¶ 192 (noting procompetitive effect of reducing entry barriers throughout the Bell Atlantic and NYNEX regions in comparison to loss of potential competitor in one market).

VI. CONCLUSION

For the foregoing reasons, the Commission should promptly and unconditionally grant the pending transfer of control Applications.

Respectfully Submitted,

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